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Attorneys for Defendants and Claimant
 BARRY COHEN, CHRIS COHEN (aka CHRISTENE COHEN), the F/V POINT LOMA and
 Claimant, F/V POINT LOMA Fishing Company, Inc.

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.,)	
)	
Plaintiff,)	No. C-07-2952-WHA
)	
v.)	ANSWER TO VERIFIED
)	ADMIRALTY AND MARITIME
BARRY COHEN, CHRIS COHEN (aka)	COMPLAINT (In Personam and In
CHRISTENE COHEN), <i>in personam</i> and,)	Rem); VERIFIED COUNTERCLAIM
F/V POINT LOMA, Official Number)	
515298, a 1968 steel-hulled, 126-gross ton,)	
70.8 foot long fishing vessel, her engines,)	
tackle, furniture apparel, etc., <i>in rem</i> , and)	
Does 1-10,)	
)	
Defendants.)	

BARRY COHEN and CHRIS COHEN (aka CHRISTENE COHEN), sued *in personam*, the F/V
 POINT LOMA, sued *in rem*, and the F/V POINT LOMA FISHING COMPANY, INC., as Claimant
 (hereinafter "Defendants"), hereby Answer the Verified Admiralty and Maritime Complaint of DEL
 MAR SEAFOODS, INC. (hereinafter "Plaintiff") and allege their Verified Counterclaim, as follows:

ANSWER TO COMPLAINT

1. Paragraph 1 of the Complaint describes the action and contains legal conclusions to
 which no response is required.

2. Paragraph 2 of the Complaint contains legal conclusions to which no response is

1 required.

2 3. Defendants aver that CHRIS COHEN resides in Scottsdale, Arizona. Defendants admit
3 the remaining allegations in Paragraph 3 of the Complaint.

4 4. Defendants lack sufficient information to form a belief as to the allegations in Paragraph
5 4 of the Complaint, and therefore deny them.

6 5. Defendants admit the allegations in Paragraph 5 of the Complaint.

7 6. Defendants deny the allegations in Paragraph 6 of the Complaint.

8 7. Defendants admit that, at the time the Promissory Note and Ship Mortgage were signed
9 in 2003, Defendants BARRY COHEN and CHRIS COHEN were the owners of the F/V POINT
10 LOMA. The ownership of the F/V POINT LOMA has since been transferred to the F/V POINT
11 LOMA FISHING COMPANY, INC., subject to the Ship Mortgage. Defendants deny all other
12 allegations in Paragraph 7 of the Complaint.

13 8. No response to Paragraph 8 of the Complaint is required.

14 9. Defendants admit the allegations in Paragraph 9 of the Complaint.

15 10. Defendants aver that the terms of the Promissory Note speak for themselves. Defendants
16 deny all other allegations in Paragraph 10 of the Complaint.

17 11. Defendants admit the allegations in Paragraph 11 of the Complaint.

18 12. Defendants aver that the terms of the Promissory Note speak for themselves. Defendants
19 deny all other allegations in Paragraph 12 of the Complaint.

20 13. Defendants aver that the terms of the Promissory Note speak for themselves. Defendants
21 deny all other allegations in Paragraph 13 of the Complaint.

22 14. Defendants aver that the terms of the Promissory Note speak for themselves. Defendants
23 deny all other allegations in Paragraph 14 of the Complaint.

24 15. Defendants deny the allegations in Paragraph 15 of the Complaint. Defendants aver that
25 they have paid \$188,000 on the note, including an advance payment of \$175,000 made at the request of
26 Plaintiff on November 10, 2005.

27 16. Defendants deny the allegations in Paragraph 16 of the Complaint. Defendants aver that
28 there is no default on the terms of the Promissory Note because of the advance payment of \$175,000 in

1 2005 and additional payments of \$13,000, which covers the required \$3,000 monthly payments under
2 the Promissory Note through at least February 2009.

3 17. Defendants admit the allegations in Paragraph 17 of the Complaint.

4 18. No response to Paragraph 18 of the Complaint is required.

5 19. Defendants admit the allegations in Paragraph 19 of the Complaint.

6 20. Defendants deny the allegations in Paragraph 20 of the Complaint.

7 21. Defendants deny the allegations in Paragraph 21 of the Complaint.

8 22. Defendants deny the allegations in Paragraph 22 of the Complaint.

9 23. Defendants admit that Plaintiff has a maritime lien on the F/V POINT LOMA but deny
10 that Plaintiff has any right to foreclose that lien because Defendants are not in default under the
11 Promissory Note due to the advance payment of \$188,000. Defendants deny that any fishing permit or
12 fishing history is subject to such lien because fishing permits and fishing history are intangibles and
13 must be specifically listed in the Promissory Note and Ship Mortgage in order to be subject to a
14 maritime lien. Defendants deny all other allegations in Paragraph 23 of the Complaint.

15 24. Defendants deny that Plaintiff is entitled to attorneys fees and costs because Defendants
16 are not in default under the Promissory Note. Defendants aver that Plaintiff owes Defendants attorneys
17 fees and costs under the Promissory Note for seizing the F/V POINT LOMA without legal cause.

18 25. No response to Paragraph 25 of the Complaint is required.

19 26. Defendants admit that Plaintiff has a maritime lien on the F/V POINT LOMA but deny
20 that Plaintiff has any right to foreclose that lien because Defendants are not in default under the
21 Promissory Note due to the advance payment of \$188,000. Defendants deny that any fishing permit or
22 fishing history is subject to such lien because fishing permits and fishing history are intangibles and
23 must be specifically listed in the Promissory Note and Ship Mortgage in order to be subject to a
24 maritime lien. Defendants deny all other allegations in Paragraph 26 of the Complaint.

25 27. Defendants deny the allegations in Paragraph 27 of the Complaint.

26 28. The remainder of the Complaint contains a prayer for relief. Defendants deny that
27 Plaintiff is entitled to any relief.

28 29. Defendants deny each and every allegation in the Complaint, whether express or implied,

1 that Defendants have not previously or expressly admitted in this Answer.

2 **AFFIRMATIVE DEFENSES**

3 30. Plaintiff has failed to state a claim for which relief may be granted.

4 31. The Court lacks subject matter jurisdiction over Plaintiff's claim.

5 32. Plaintiff lacks standing to bring its claim.

6 33. Plaintiff's claims are barred by estoppel.

7 34. Plaintiff's claims are barred by accord and satisfaction.

8 35. Plaintiff has consented to the acts of Defendants complained of in the Complaint.

9 36. Plaintiff does not come into Court with clean hands.

10 37. Plaintiff has failed to obtain affirmative consent to make any alleged advances under the
11 Promissory Note for debts completely unrelated to the operation and use of the F/V POINT LOMA.

12 38. Plaintiff has failed to document in writing any alleged advances under the Promissory
13 Note.

14 **COUNTERCLAIM**

15 For their Counterclaim against Plaintiff, Defendants allege as follows:

16 39. The arrest of the F/V POINT LOMA by Plaintiff was wrongful in that (a) Plaintiff has
17 refused, without cause, to admit that Defendants have paid \$188,000 on the Promissory Note, including
18 an advance payment of \$175,000; (b) Defendants were therefore not in default under the Promissory
19 Note; (c) Plaintiff improperly alleges that the total amount of the loan was greater than \$215,000
20 because of advances under the Promissory Note that Defendants never agreed were subject to the
21 Promissory Note and Ship Mortgage; and (d) none of these relevant, material facts were disclosed to
22 the Court when Plaintiff sought the arrest warrant in this case.

23 40. Because Defendants paid in November 2005 an amount equivalent to 37 monthly
24 payments in advance, Defendants are not in default and the arrest of the vessel is in breach of the
25 Promissory Note and the Ship Mortgage.

26 41. The wrongful arrest of the F/V POINT LOMA has disrupted the fishing activities of the
27 Vessel and prevents it from earning income for the benefit of Defendants, including as a source of
28 income to pay off the remaining amount due to Plaintiff under the Promissory Note. Plaintiff has

1 therefore intentionally and/or negligently interfered with Defendants prospective economic advantage.
2 42. In taking the action it did, Plaintiff has breached the implied Covenant of Good Faith and
3 Fair Dealing incorporated into the Promissory Note and Ship Mortgage.

4 **REQUEST FOR RELIEF**

5 WHEREFORE, Defendants respectfully request that the Court:

- 6 a. Enter an order quashing the arrest of the F/V POINT LOMA as wrongful and not
7 authorized under the terms of the Promissory Note and Ship Mortgage;
8 b. Enter an order finding Plaintiff in breach of the Promissory Note and the Ship
9 Mortgage;
10 c. Enter an order finding that Plaintiff has intentionally and/or negligently interfered
11 with the prospective economic advantage of Defendants;
12 d. Enter an order awarding Defendants damages for wrongful or improper arrest, for
13 breach of the Promissory Note and Ship Mortgage, and for intentional and/or negligent interference
14 with Defendants' prospective economic advantage;
15 e. Enter an order awarding Defendants their attorney's fees and costs; and
16 f. Grant Defendants such further relief as may be appropriate and fair.

17 DATED this 25th day of June, 2007.

18
19 Respectfully submitted,

20 /s/ James P. Walsh

21 James P. Walsh (CSB No. 184620)
22 Gwen Fanger (CSB No. 191161)
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28 Attorneys for Defendants

VERIFICATION

I, Barry Cohen, hereby state the follows:

1. I am a resident of the State of California and a defendant in this case and an officer in F/V POINT LOMA Fishing Company, Inc., a company organized under the laws of the State of California.

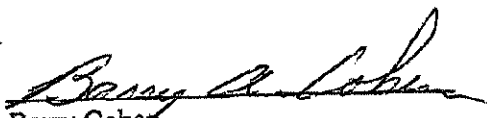
2. I have read the above Answer to Admiralty and Maritime Complaint and Verified Counterclaim and hereby verify the facts set forth therein to the best of my knowledge and belief.

3. I am authorized on behalf of all Defendants to verify the Counterclaim to Plaintiff's Complaint.

I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this verification was entered into at Avila Beach, California.

Dated this 25 day of June, 2007.

BY:


Barry Cohen

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